



ZONING ADMINISTRATOR
NOTICE OF DECISION

Date: November 8, 2011
Applicant: Simon and Cindy, Inc.
Case No.: PCC-11-041
Address: 945 Otay Lakes Road, Suite C, Chula Vista, Ca.
A.P.N.: 642-170-10-00
Project Planner: Richard Zumwalt, A.I.C.P., Associate Planner

Notice is hereby given that on November 8, 2011, the Zoning Administrator considered a Conditional Use Permit (PCC-11-041) application filed by Simon and Cindy, Inc ("Applicant") to allow the on-site sales and consumption of alcohol beverages, limited to beer and wine only, at a restaurant called Pho Convoy Noodle House ("Project"), at the College Plaza Shopping Center at 945 Otay Lakes Road in Chula Vista, Ca. ("Project Site"). The project site has a zoning designation of Neighborhood Commercial (CN), which requires a restaurant serving alcoholic beverages to obtain approval of a Conditional Use Permit. The Project Site has a General Plan designation of Commercial Retail (CR). The Property is owned by the Kelton Title Corporation ("Property Owner"). The proposed land use is more specifically described below:

The application requests approval of a Conditional Use Permit to permit the on-site sale and consumption of alcoholic beverages, limited to the sale of beer and wine only, for an existing restaurant serving Vietnamese food, including dine-in and take out. The restaurant would occupy an existing 3,665 square foot suite with a capacity of 80 customers. The restaurant would be open between 10:00 a.m. to 10:00 p.m. each day of the week. The restaurant anticipates a maximum of 6 employees at one time and serves lunch and dinner daily with alcoholic service available for on-site consumption only.

Pursuant to the Municipal Code, restaurants serving alcoholic beverages within property zoned for Neighborhood Commercial (CN) uses are conditionally permitted subject to approval of a Conditional Use Permit. Live entertainment is not proposed by the project or permitted in the CN zone.

The Director of Development Services has reviewed the proposed Project for compliance with the California Environmental Quality Act and has determined that the Project qualifies for a Class 1 categorical exemption pursuant to Section 15301 (existing facilities) of the State CEQA Guidelines. Thus, no further environmental review is necessary.

The Zoning Administrator, under the provisions of Section 19.14.030 A of the Chula Vista Municipal Code, has been able to make the following Conditional Use Permit findings as required by CVMC Section 19.14.080:

That the proposed use at this location is necessary or desirable and will contribute to the general well being of the neighborhood or the community.

The proposed Vietnamese food restaurant is located within a neighborhood commercial center with retail commercial and restaurant uses, and the restaurant is consistent with the types of uses that would be found within the commercial center. The restaurant with incidental alcohol sales would provide desirable dining opportunities for the neighborhood and surrounding areas. The restaurant and incidental alcohol sales would provide customary service typically offered by other dine-in restaurants in the area.

That such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity.

The Pho Convoy Noodle House restaurant is located within the College Plaza commercial center, which is designed for this and other complimentary food and retail uses. The center includes approximately 300 parking spaces shared by the different shopping center tenants, which includes the 32 parking spaces required to serve this restaurant. Southwestern Community College is located across Otay Lakes Road to the west of the shopping center, and an existing residential area is located to the east, north and south of the center. The existing residential area is approximately 20 feet higher in elevation than that of the shopping center, and separated by a large landscaped slope. The restaurant is located in the center portion of the shopping center, facing the parking lot, away from the residential area. Except for any additional deliveries to the rear entrance, any increase in activities related to the sale of beer and wine, would occur in front of the restaurant and adjacent parking lot and therefore would not adversely affect the adjacent residential area. The applicant is required to obtain an Alcoholic Beverage Control license from the State Of California Alcoholic Beverage Control Commission (ABC) for the sales of alcohol complying with all applicable state and local regulations. Conditions of approval are included in the CUP and the ABC license, which will ensure that the sale and consumption of alcoholic beverages are limited to the hours specified in this permit, and that alcohol sales can only be conducted indoors and are prohibited outside the restaurant, and that the doors to the business be closed to minimize any noise related to the operation of the restaurant and sale of alcoholic beverages. Other conditions of approval are included which will limit the number of alcoholic beverages sold at one time to customers, prohibit sales to minors, and minimize loitering adjacent to the restaurant.

That the proposed use will comply with the regulations and conditions specified in the code for such use.

Granting of this conditional use permit is conditioned to require the Applicant and Property Owner to fulfill the conditions of approval and to comply with all applicable regulations and standards specified in the Municipal Code for such use. These conditions will be enforced through building plan review, inspections prior to occupancy of the use and subsequent operation of the business. Furthermore, the conditions of this permit are approximately in proportion to the nature and extent of the impact created by the project in that the conditions imposed are directly related to, and of a nature and scope related to the size and impact of the project. The project will

comply with all regulations and conditions specified in the Zoning Code for uses established under PCC-11-041.

That the granting of this Conditional Use Permit will not adversely affect the General Plan of the City or the adopted plan of any government agency.

The General Plan designates the site as Commercial Retail, which permits commercial land uses. Restaurants, which sell food as the primary use, with incidental sales and consumption of alcoholic beverages, are considered consistent with Commercial Retail land uses upon approval of a Conditional Use Permit. Thus, the proposed restaurant use with incidental alcohol sales is consistent with the General Plan Land Use and Transportation Element, and will not adversely affect implementation of the City's General Plan.

BASED ON THE FINDINGS ABOVE, THE ZONING ADMINISTRATOR hereby approves Conditional Use Permit PCC-11-041 as described above. The following conditions shall apply to the Project Site, and the Applicant or successor-in-interest shall satisfy these conditions prior to establishment of the use and the commencement of sales and use of alcoholic beverages, or at the timeframe specified in the condition:

PLANNING DIVISION:

- 1 The Project Site shall be maintained in accordance with the PCC-11-041 approved plans, which include site plans and floor plans on file in the Planning Division, the conditions contained herein, and the Zoning Ordinance (Title 19). The Applicant or successor-in-interest shall remain in compliance with the conditions as long as the Project relies upon this approval.
2. The Property Owner or authorized representative shall execute this document by making a true copy of this Notice of Decision and signing both this original notice and the copy on the lines provided below, said execution indicating that the Property Owner and the Applicant have each read, understood and agreed to the conditions and land use operation modifications contained herein, and will implement same. Upon execution, the true copy with original signatures shall be returned to the Development Services Department. Failure to return the signed true copy of this document prior to submittal for building permits to the Development Services Department shall indicate the Property Owner's and Applicant's desire that the project, and the corresponding application for building permits and/or a business license, be held in abeyance without approval.

Signature of Property Owner

Date

Signature of Applicant or Authorized Representative

Date

3. The applicant shall obtain an alcoholic beverage control license from the State of California prior to commencement of sale of alcoholic beverages. The Applicant shall comply with the applicable State ABC Laws and City Ordinances, and all conditions required by the Chula Vista Police Department pertaining to the sale and consumption of alcoholic beverages.


Upon certification by the Development Services Department for occupancy or establishment of use allowed by this Conditional Use Permit, the following conditions shall apply:

PLANNING DIVISION:

4. This permit is valid for operation of a restaurant with on-site sales of beer and wine only, where the sale of alcoholic beverages is incidental to the sale of food.
5. The hours of operation of the restaurant, including beer and wine sales, shall be 10:00 a.m. to 10:00 p.m., Monday through Sunday (seven days a week).
6. The Applicant shall operate the project in compliance with the Performance Standards, CVMC Chapters 19.66 and Performance Standards and Noise Control, Chapter 19.68. If a formal complaint is received by the Director of Development Services, or if the Director determines that the Applicant is not operating in compliance with the conditions of approval of this permit, then the Director has the discretion to initiate an investigation which may include requesting the applicant to submit plans, technical studies such as acoustical studies, or other information deemed necessary to respond to the complaint or non-compliance issue. After review, the Director has the discretion to either maintain the existing Conditional Use Permit, modify the Conditional Use Permit, or revoke the Conditional Use Permit, pursuant to the requirements of CVMC Section 19.14.270.
7. Prior to the sale of alcoholic beverages, the Applicant, shall obtain approval of the Alcoholic Beverage Control License and operate in compliance with the following requirements of the Chula Vista Police Department (CVPD), including:
 - a. Sales, service and consumption of alcoholic beverages shall comply with all requirements of the approved ABC license.
 - b. There shall be no amusement games, pool or billiard tables, bar or lounge area upon the ABC-licensed premises maintained for the purpose of sales, service or consumption of alcoholic beverages, without obtaining prior approval of a modification this Conditional Use Permit by the Zoning Administrator, and approval of an amendment of the approved ABC license, to the satisfaction of the CVPD.
 - c. Per CVMC 19.34.020, there shall be no public dance or night club conducted on the premises.

- d. The doors shall be kept closed at all times during the operation of the premises except in cases of emergency. Said door(s) not to consist solely of a screen or ventilated security door.
 - e. The use of any amplifying system or device inside the premises shall not be audible 25 feet outside of the ABC designated alcohol service areas.
 - f. There shall be no live entertainment permitted in the premises at any time.
 - g. Loitering is prohibited on or around the premises under control of the applicant. The applicant shall police the area under their control in an effort to prevent loitering.
 - h. The applicant shall implement the security recommendation of the Crime Prevention Unit of the Police Department, including access control, surveillance detection, and police response, and ongoing training of management and employees in security procedures and crime prevention. Implementation of these recommendations shall coincide with the commencement of operations.
 - i. No hosting by outside promoters of live entertainment will be permitted at the restaurant without written permission of the City of Chula Vista Police Department.
 - j. The City of Chula Vista Police Department reserves the right to impose additional security conditions as part of any dance, live entertainment, or special event permit approval process.
8. This Conditional Use Permit for the incidental sale and onsite consumption of alcohol shall be applied to Pho Convoy Noodle House or similar food establishments at this location. In the event that a different type of food establishment is proposed where the sale and onsite consumption of alcohol is a principal and not an incidental use, an amendment to this Conditional Use Permit or a new Conditional Use Permit shall be required prior to the sale of alcohol.
9. Prior to approval of any request for an amendment of the approved ABC license or this Conditional Use Permit, the Applicant shall submit and obtain approval of an application requesting a substantial conformance review or modification of this Conditional Use Permit, for consideration by the Director of Development Services and the Chula Vista Police Department.
10. This permit shall become void if not used or extended within three years of the effective date thereof in accordance with Section 19.14 260 of the Chula Vista Municipal Code. Failure to comply with the any conditions of approval shall cause this permit to be reviewed by the City for additional conditions or revocation.
11. Applicant and his/her successors in interest agree to defend, indemnify and hold harmless the City and its agents, officers and employees, from any claim, action or proceeding against the City, or its agents, officers or employees, to attack, set aside, void or annul any approval by the City, including approval by its Planning Commission, City Council or any approval by its agents, officers, or employees with regard to this Conditional Use Permit, provided the City promptly notifies the Applicant of any claim, action or proceeding and on the further condition that the City fully cooperates in the defense.

APPROVED BY ZONING ADMINISTRATOR OF THE CITY OF CHULA VISTA,
CALIFORNIA, this 8th day of November, 2011.



Mary Ladiaga,
Zoning Administrator

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